



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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0067

September 23, 1992

CERTIFIED RETURN RECEIPT
P 074 979 288

Mr. Glen Zumwalt, VP
Utah Fuel Company
P.O. Box 719
Helper, Utah 84526

Dear Mr. Zumwalt:

Re: Proposed Assessment for State Violations N92-37-5-1, N92-37-6-1, and N92-37-7-1, Utah Fuel Company, Skyline Mine, ACT/007/005, Folder #5, Carbon County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed are the proposed civil penalty assessments for the above-referenced violations. The violations were issued by Division Inspector, Priscilla Burton on August 26, 1992. Rule R645-401-600 et. sec. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

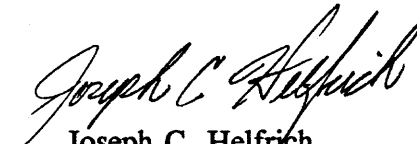
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt of this

Page 2
N92-37-5-1
N92-37-6-1
N92-37-7-1
ACT/007/005
September 23, 1992

letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,


Joseph C. Helfrich
Assessment Officer

jbe
Enclosure
cc: Bernie Freeman, OSM

**WORKSHEET FOR ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Utah Fuel Company/Skyline Mine

NOV # N92-37-5-1

PERMIT # ACT/007/005

VIOLATION 1 **OF** 1

ASSESSMENT DATE 09/18/92

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 09/18/92

EFFECTIVE ONE YEAR TO DATE 09/18/92

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

1 point for each past violation, up to one year;

5 points for each past violation in a CO, up to one year;

No pending notices shall be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Event

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?
Environmental Harm and Water Pollution

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Occurred

... PROBABILITY	RANGE
... None	0
... Unlikely	1-9
... Likely	10-19
... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS

Analysis of the inspector's statement revealed that ditch DD9 was not maintained to design standards and was in an unstable state, as exhibited by the erosion at the downstream end of DD9 where water was discharged to a newly installed rock channel and berm. Erosion of the newly configured pad created a large gully immediately north of DD9, above the buried culvert CD6. Recently, amendment 92H was submitted to update the MRP. This amendment for burial of CD6 did not contain information on the reconfiguration of the pad or slope and drainage design changes to DD9.

3. What is the extent of actual or potential damage?

RANGE 0 - 25*

*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

PROVIDE AN EXPLANATION OF POINTS

Minimal. The analysis of the inspector's statement revealed that the design of ditches on the site was not being maintained as described in the MRP. Water coursing through the site was carrying excessive sediment to the ponds as evidenced by the two sediment catch basins along the perimeter of the disturbed area. The catch basins are not approved in the plan. The first catch basin was upstream of the pond between DD10 and DD11. The second catch basin was at the outlet of DD11, alongside the pond and on the pond embankment. Mr. Zobell indicated that the purpose of the catch basins was to reduce sedimentation to the pond and thereby reduce cleanout. The catch basin on the sediment pond embankment was a potential risk to Eccles Creek water quality and to the stability of the pond embankment as

well. Had the upstream ditches been maintained to the design standards, the use of catch basins would have been unnecessary.

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? _____
RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A or B) 13

III. NEGLIGENCE MAX 30 PTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**
OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**
OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 22

PROVIDE AN EXPLANATION OF POINTS

In this particular instance, the permittee, Utah Fuel Company, had developed a system of water control at their railroad loadout (new rock channels, eliminating swales,

creating catch basins, reconfiguring the pad slope, etc.) which varied considerably from the MRP. The new drainage system was not approved by the Division nor amended to the MRP. Recent amendments to the MRP involving the placement of an open coal storage pile and reclaim conveyor belt (92E) and culvert (92H) at the RRLO indicate that the company was aware of the need to update the MRP concerning site facilities and drainage control. However, no amendment had been filed concerning the changes to the drainage plan or site configuration as it was seen during the complete inspection. Additionally, the permittee was in violation of a specific permit condition as described in the MRP, volume 5, section 10, page 4/4. As a result, a greater degree of negligence is assessed barring intentional or willful conduct.

IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?

... **IF SO - EASY ABATEMENT**

Easy Abatement Situation

... **Immediate Compliance -11 to -20***

... Immediately following the issuance of the NOV)

... **Rapid Compliance -1 to -10***

... (Permittee used diligence to abate the violation)

... **Normal Compliance 0**

(Operator complied within the abatement period required)

(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

... **IF SO - DIFFICULT ABATEMENT**

Difficult Abatement Situation

... **Rapid Compliance -11 to -20***

... (Permittee used diligence to abate the violation)

... **Normal Compliance -1 to -10***

... (Operator complied within the abatement period required)

... **Extended Compliance 0**

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)
 (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____ ASSIGN GOOD FAITH POINTS -0

PROVIDE AN EXPLANATION OF POINTS

To be evaluated upon termination of the violation.

V. ASSESSMENT SUMMARY FOR N92-37-5-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>13</u>
III.	TOTAL NEGLIGENCE POINTS	<u>22</u>
IV.	TOTAL GOOD FAITH POINTS	<u>- 0</u>
	TOTAL ASSESSED POINTS	<u>35</u>
	TOTAL ASSESSED FINE	<u>\$ 500.00</u>

jbe

**WORKSHEET FOR ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Utah Fuel Company/Skyline Mine

NOV #N92-37-6-1

PERMIT # ACT/007/005

VIOLATION 1 OF 1

ASSESSMENT DATE 09/18/92

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 09/18/92

EFFECTIVE ONE YEAR TO DATE 09/18/91

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

1 point for each past violation, up to one year;
5 points for each past violation in a CO, up to one year;
No pending notices shall be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Event

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?
Activity outside the approved permit area*, damage to property*,
environmental harm**, water pollution**, and reduced establishment,
diverse and effective vegetative cover***.

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Occurred

... PROBABILITY	RANGE
... None	0
... Unlikely	1-9
... Likely	10-19
... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

*The analysis of the inspector's statement revealed that activity outside the approved permit area and damage to property encompassed areas of approximately 10' X 10' around each conveyor foundation were included in the disturbed area of the conveyor route. The permit area boundary was drawn as a line running parallel to the State Highway, approximately 20' above the roadside ditch for most of its length. Although access to the disturbed area had been accounted for in the construction plan, the plans had not been followed and the unpermitted area was affected by construction activity.

**On the date of the inspection, erosion control measures had not been installed as described in the construction plan. Usually, three straw bales were laid below the foundation, but they were not keyed into the slope and they did not treat the entire disturbance. Therefore, silt and soil was allowed to travel down the slope to the highway ditch, where more straw bales had been placed into the ditch. Although the highway roadside ditch was being utilized to treat the construction disturbance, maintenance of highway culverts emptying into Eccles Creek had been neglected.

***Disturbance outside of the permit area affected steep south facing slopes. Reclamation of these slopes was not easy as Utah Fuel Company had experienced difficulty in attempting reclamation of the cut slopes on the conveyor bench, a decade after the original disturbance. Since the area disturbed is not within the permit area, no bonded obligation exists for reclaiming these slopes to a revegetation success standard.

Evaluation of the construction plan for the conveyor provided for protection of the unpermitted area by indicating that the hillside would be access with cranes and ladders. The inspection revealed only two ladders were seen at the site and many of the contractor's employees were observed sliding down the slope and creating excessive disturbance to the unpermitted area below the conveyor foundations. The

construction plan referred to repairing damage created by the truck equipment at the toe of the slope, however, a commitment to repair additional damage on the slope itself was not described.

The placement of strawbales and other sediment filters was not in accordance with the plan which stated that "erosion control measures will be installed just down slope of the drill hole" wide enough to treat spoil which could not be retrieved for salvage or disposal. It was "expected that this might be an area about 8 feet across." Strawbale placement was limited to approximately three bales below each foundation. The bales were not keyed to the slope. Sediment control within the disturbed and permit area was abandoned in favor of utilizing the roadside ditch located off the permit area.

Further inspection revealed that two culverts were completely plugged and a third partially plugged with construction debris. One culvert was blocked with construction debris and had no siltation treatments.

3. What is the extent of actual or potential damage?

RANGE 0 - 25*

*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 15

PROVIDE AN EXPLANATION OF POINTS

Below each foundation is a conical shaped disturbed area extending down to the roadside ditch which has been affected by construction activities and debris from drilling. Sediment control was placed in the highway ditch but was not keyed in allowing water to pass under the strawbales. The highway ditches were not maintained to ensure that they would function. There was a potential for water to back up into the highway ditch and run over the road, carrying sediments directly into Eccles Creek, an important fishery spawning habitat. Additionally, sediments not completely cleared from the roadside ditch were not being precluded from eventually entering into Eccles Creek.

The impact of accessing the slope without cranes or ladders created slopes which will require supplemental seeding and mulching as the slopes are south facing and fairly steep.

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? _____
 RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A or B) 35

III. NEGLIGENCE MAX 30 PTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**
 OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 22

PROVIDE AN EXPLANATION OF POINTS

The operator's approved MRP did not address nor contain approval for the additional disturbance of the slopes caused by construction of the conveyor pads. A previous discussion on the subject was held between Mr. Paul Baker and Mr. Zobell during the inspection of July 16, 1992. Following this inspection, a revised construction plan

was submitted July 21, 1992 to the Division, requesting approval for use of the highway ditches as a primary sediment treatment for the disturbed area. This amendment was denied and a discussion between Mr. Rick Summers and Mr. Zobell followed. On the topic, Mr. Summers stressed that the Division would not discourage the placement of strawbales in the highway ditch, however, treatment of the sediment within the disturbed area was required by R645-301-742.121. As a result of the actions of the permittee, the violation occurred under knowing circumstances, thus a greater degree of fault is assessed.

IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?

... IF SO - EASY ABATEMENT

Easy Abatement Situation

- ... Immediate Compliance -11 to -20***
- ... Immediately following the issuance of the NOV)**
- ... Rapid Compliance -1 to -10***
- ... (Permittee used diligence to abate the violation)**
- ... Normal Compliance 0**
(Operator complied within the abatement period required)
(Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

... IF SO - DIFFICULT ABATEMENT

Difficult Abatement Situation

- ... Rapid Compliance -11 to -20***
- ... (Permittee used diligence to abate the violation)**
- ... Normal Compliance -1 to -10***
- ... (Operator complied within the abatement period required)**
- ... Extended Compliance 0**

(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)
 (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____ ASSIGN GOOD FAITH POINTS -0

PROVIDE AN EXPLANATION OF POINTS

To be evaluated upon termination of the violation.

V. ASSESSMENT SUMMARY FOR N92-37-6-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>35</u>
III.	TOTAL NEGLIGENCE POINTS	<u>22</u>
IV.	TOTAL GOOD FAITH POINTS	<u>- 0</u>
	TOTAL ASSESSED POINTS	<u>57</u>
	TOTAL ASSESSED FINE	<u>\$ 1280.00</u>

jbe

**WORKSHEET FOR ASSESSMENT OF PENALTIES
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Utah Fuel Company/Skyline Mine

NOV #N92-37-7-1

PERMIT # ACT/007/005

VIOLATION 1 **OF** 1

ASSESSMENT DATE 09/18/92

ASSESSMENT OFFICER Joseph C. Helfrich

I. HISTORY MAX 25 PTS

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 09/18/92

EFFECTIVE ONE YEAR TO DATE 09/18/91

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

1 point for each past violation, up to one year;
5 points for each past violation in a CO, up to one year;
No pending notices shall be counted.

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (either A or B)

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Hindrance

A. Event Violations Max 45 PTS

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? _____

... PROBABILITY	RANGE
... None	0
... Unlikely	1-9
... Likely	10-19
... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS

3. What is the extent of actual or potential damage?

RANGE 0 - 25*

*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS _____

PROVIDE AN EXPLANATION OF POINTS

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? Actual

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS

The surface facilities map which was certified and submitted with the most recent amendment (92H) to the railroad loadout facilities, dated July 8, 1992, was not accurate with regard to topography of the site and drainage design details. The surface features found at the site on August 18, 1991 were not in compliance with the approved maps and plans.

TOTAL SERIOUSNESS POINTS (A or B) 15

III. NEGLIGENCE MAX 30 PTS

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**
 OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Ordinary

ASSIGN NEGLIGENCE POINTS 13

PROVIDE AN EXPLANATION OF POINTS

Recent amendments to the MRP involving the placement of an open coal storage pile and reclaim conveyor belt (92E) and culvert (92H) at the railroad loadout indicate that the company was aware of the need to update the MRP concerning site facilities. However, no amendment had been filed concerning the changes to the site configuration and the resultant effect on the drainage plan.

IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?
 ... **IF SO - EASY ABATEMENT**
 Easy Abatement Situation
 ... **Immediate Compliance -11 to -20***
 ... **Immediately following the issuance of the NOV)**
 ... **Rapid Compliance -1 to -10***
 ... **(Permittee used diligence to abate the violation)**

- ... **Normal Compliance** **0**
 (Operator complied within the abatement period required)
 (Operator complied with conditions and/or terms of approved
 Mining and Reclamation Plan)

* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

... **IF SO - DIFFICULT ABATEMENT**

Difficult Abatement Situation

- ... **Rapid Compliance** **-11 to -20***
 ... (Permittee used diligence to abate the violation)
 ... **Normal Compliance** **-1 to -10***
 ... (Operator complied within the abatement period required)
 ... **Extended Compliance** **0**
 (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)
 (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? ____ **ASSIGN GOOD FAITH POINTS** -0

PROVIDE AN EXPLANATION OF POINTS

To be evaluated upon termination of the violation.

V. ASSESSMENT SUMMARY FOR N92-37-7-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>15</u>
III.	TOTAL NEGLIGENCE POINTS	<u>13</u>
IV.	TOTAL GOOD FAITH POINTS	<u>- 0</u>
	TOTAL ASSESSED POINTS	<u>28</u>
	TOTAL ASSESSED FINE	<u>\$ 360.00</u>